

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GTECH CORPORATION,

Plaintiff,

v.

C.A. No. 04-138-JJF

SCIENTIFIC GAMES INTERNATIONAL,
INC., SCIENTIFIC GAMES HOLDINGS
CORPORATION, SCIENTIFIC GAMES
FINANCE CORPORATION, and
SCIENTIFIC GAMES CORPORATION,

Defendants.

**SCIENTIFIC GAMES' RESPONSE TO GTECH'S MOTION IN LIMINE NO. 5 TO
EXCLUDE REFERENCE TO GTECH'S NOT SERVING THE COMPLAINT OR NOT
NOTIFYING SCIENTIFIC GAMES THAT GTECH HAD FILED THE LAWSUIT**

Scientific Games International, Inc., Scientific Games Holdings Corporation, Scientific Games Finance Corporation, and Scientific Games Corporation (collectively, "Scientific Games") oppose GTECH's motion in limine to exclude reference to GTECH's failure to serve the Complaint or to notify Scientific Games that it had filed the lawsuit.

GTECH intends to present evidence at trial to prove that Scientific Games has willfully infringed the patents in suit. *See* D.I. 175, Ex. 8. Willfulness is determined, however, based on the totality of the circumstances:

Determination of willfulness is made on consideration of the totality of the circumstances . . . and may include contributions of several factors These contributions are evaluated and weighed by the trier of fact, for . . . "[w]illfulness' in infringement, as in life, is not an all-or-nothing trait, but one of degree. It recognizes that infringement may range from unknowing, or accidental, to deliberate, or reckless, disregard of a patentee's legal rights."

Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp., 383 F.3d 1337, 1342-43 (Fed. Cir. 2004) (*en banc*) (quoting *Rite-Hite Corp. v. Kelley Co.*, 819 F.2d 1120, 1125-26 (Fed. Cir. 1987)).

GTECH's failure to notify Scientific Games of its patents or that it had filed the lawsuit or to serve the Complaint is part of the totality of the circumstances and is relevant to GTECH's allegation of willful infringement of the patents in suit. GTECH's motion in limine should be denied.

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February 2, 2006

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CERTIFICATE OF SERVICE

I, Rodger D. Smith II, hereby certify that on February 2, 2006, I caused to be electronically filed Scientific Games' Response To GTECH's Motion In Limine No. 5 To Exclude Reference To GTECH's Not Serving The Complaint Or Not Notifying Scientific Games That GTECH Had Filed The Lawsuit with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Josy W. Ingersoll
Young, Conaway, Stargatt & Taylor, LLP
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Wilmington, DE 19899

and that I caused copies to be served upon the following in the manner indicated:

BY HAND

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